
(2025) 07 SHI CK 1041
In the High Court Of Himachal Pradesh
Case No : CWP No.105 Of 2025

Anil Kumar

APPELLANT

Vs

State Of H.P. And Others

RESPONDENT

Date of Decision : 08-07-2025

Acts Referred:

Citation : (2025) 07 SHI CK 1041

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Ashir Kaith, Pushpender Jaswal, Mukul Sood

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J

1. Petitioner herein, who at present is working as Sub-Divisional Police Officer, Baijnath, District Kangra, Himachal Pradesh, is aggrieved of order dated 24.12.2024 (Annexure P-9) whereby he has been transferred from afore station to Police Training College, Daroh, District Kangra, Himachal Pradesh.

2. Precisely, the grouse of the petitioner, as has been highlighted in the petition and further canvassed by Mr. Ajay Sharma, learned Senior Counsel, duly assisted by Mr. Atharv Sharma, learned counsel representing the petitioner is that impugned transfer order of the petitioner, issued in violation of the transfer policy, deserves to be quashed and set-aside. Mr. Sharma, learned Senior Counsel representing the petitioner stated that impugned transfer of the petitioner has been effected on the basis of political interference and as such, needs to be interfered. He submitted that since petitioner ordered to issue Challan against son of M.L.A. of the area concerned, competent authority on the basis of recommendations made by M.L.A. of the area concerned, proceeded to pass impugned transfer order. While making this Court Peruse Section 12 of Himachal Pradesh Police Act, 2012 (for short, 'the Act'), Mr. Sharma submitted that ordinarily the tenure of Sub-Divisional Police Officer (for short, 'SDPO') is of two

years and if an SDPO is to be transferred before expiry of two years, then reasons are to be recorded in writing in terms of provisions of the said Act, however, impugned transfer order nowhere suggests compliance of aforesaid procedure. He further submitted that as per Section 43 of the Act, administration of the Police throughout the State shall vest in the Director General of Police and State Government has no role whatsoever in the exercise of administrative power by Director General of Police, who is the only competent authority to issue transfer order of a Police Officer. While referring to Section 56 of the Act, Mr. Sharma submitted that otherwise also, transfer of the Police Officer can only be recommended by Police Establishment Committee headed by Director General of Police comprising of four senior police officers, not below rank of Inspector General of Police, nominated by the Director General of Police, but in the instant case, procedure as laid down in Sections 12 and 56 of the Act has not been followed, rather merely on the dictate of a political person, respondents/State has proceeded to transfer the petitioner, who had yet not completed minimum tenure of two years at the present place of posting.

3. To the contrary, Mr. Rajan Kahol, learned Additional Advocate General while justifying the impugned action of respondents vehemently argued that there is nothing to suggest that impugned transfer order has been passed on the recommendations of any political person, as alleged. He further submitted that there is nothing on record to suggest that impugned transfer of the petitioner has been effected on account of the fact that petitioner herein had some altercation with the son of M.L.A. of the area concerned, rather, impugned transfer has been ordered on administrative grounds.

4. Mr. Jagdish Thakur, learned counsel representing private-respondent No.3, while adopting the arguments raised by learned Additional Advocate General, further submitted that petition at hand otherwise deserves outright dismissal for the reason that petitioner has not approached this Court with clean hands, rather, has attempted to misstate the facts. While making this Court peruse Para 9 of the petition, Mr. Thakur submitted that petitioner wrongly submitted before this Court that private-respondent had not joined as Sub-Divisional Police Officer, Baijnath. He submitted that on account of concealment of afore relevant fact, petitioner succeeded in obtaining order dated 03.01.2025, whereby direction was issued to respondents to permit petitioner to continue to serve at Baijnath with further direction to private-respondent No.3 to serve at the station where he was posted, before issuance of impugned transfer order.

5. Before ascertaining correctness of rival submissions made by learned counsel representing the parties, it is apt to take note of the fact that this Court having taken note of non-compliance of provisions contained in Sections 12 and 56 of the Act, had called upon learned Additional Advocate General to produce record of transfer, especially proposal, on the basis of which petitioner herein was ordered to be transferred.

6. Pursuant to order dated 03.06.2025, learned Additional Advocate General

made available record of transfer, which Court after its perusal, returned to the Officer concerned. Careful perusal of record made available to this Court nowhere suggests compliance of Sections 12 and 56 of the Act. Record made available to this Court revealed that pursuant to approval given by the Hon'ble Governor of Himachal Pradesh, Chief Secretary to the Government of Himachal Pradesh, vide notification dated 24.12.2024, ordered transfer and posting of 17 Police Officers, including petitioner, whose name figures at Sr. No.8. Perusal of aforesaid notification, which has been otherwise placed on record as Annexure P-9, nowhere suggests that same has been issued on the recommendations made by Director General of Police, who otherwise in terms of recommendations, if any, made by Police Establishment Committee, ought to have ordered transfer of Police Officers, that too, in situations, as provided under Clause 12 of the Act by passing speaking order. Though this Court having perused record as well as other material adduced on record is persuaded to agree with Mr. Rajan Kahol, learned Additional Advocate General, that impugned transfer of the petitioner is not on the basis of political interference, as alleged by the petitioner, but certainly transfer of the petitioner appears to have been made in violation of Sections 12 and 56 of the Act. At this stage, it would be apt to take note of Sections 12 and 56 of the Act, which read as under:

"12. Tenure of office of police functionaries.- An Officer posted as Station House Officer or as Sub-Divisional Police Officer or as Superintendent of Police of a District shall normally have a minimum tenure of two years and a maximum tenure of three years, unless promoted to a higher post earlier:

Provided that an officer may be retained for upto six months after expiry of his tenure, in the public interest for reasons to be recorded in writing:

Provided further that any such officer may be removed from his post before the expiry of the minimum tenure of two years by the authority competent to remove him for reasons to be recorded in writing, consequent upon-

- (i) filing of a charge sheet in a criminal case in a Court of law; or
- (ii) serving of a charge-sheet for a major penalty under the relevant disciplinary rules; or
- (iii) suspension from service in accordance with the provisions of the relevant disciplinary rules; or
- (iv) reversion to a lower post for administrative reasons; or
- (v) incapacitation by physical or mental illness or otherwise becoming unable to discharge his functions and duties; or
- (vi) administrative exigencies, in the larger public interest.

56. Police Establishment Committees.- (1) There shall be a State Police Establishment Committee headed by the Director-General of Police and comprising four senior police officers not below rank of Inspector General of

Police, nominated by the Director General of Police. The State Police Establishment Committee shall be responsible to-

- (i) approve all postings and transfers of Non-Gazetted Police Officers between the various wings of the police organization, and deputation outside the organization and for inter-range transfers in all the wings with the prior approval of the Government in accordance with directions in this regard;
- (ii) approve the issue of general policy directions and Standing Orders to the Deputy Inspector-General and District Superintendent of Police on transfers within their jurisdiction;
- (iii) hear and dispose of representations against transfer orders issued by authorities subordinate to the Director-General of Police;
- (iv) recommend proposals for postings and transfers of Gazetted Police Officers to the State Government subject to provisions of this Act and relevant rules; and
- (v) make recommendations to the State Government with regard to representations in service matters from Gazetted Police Officers:

Provided that the Director-General of Police may, with the previous approval of the State Government, constitute an Establishment Committee for any specific unit within the Police Organisation for making postings and transfers of Non-Gazetted Police Officers within such unit.

7. Section 12, as reproduced hereinabove, clearly reveals that an Officer posted as Station House Officer or as Sub-Divisional Police Officer or as Superintendent of Police of a District shall normally have a minimum tenure of two years and a maximum tenure of three years, unless promoted to a higher post. Proviso 2 to aforesaid provision though empowers competent authority to remove aforesaid officers from their post before the expiry of minimum tenure of two years, but that too for the reasons/situation given in the aforesaid provision itself. Police Officer, as detailed hereinabove, can be removed/transferred before the expiry of minimum tenure of two years in the event of filing of a charge-sheet in a criminal case in a Court of law; or serving of a charge-sheet for a major penalty under the relevant disciplinary rules; or suspension from service in accordance with the provisions of the relevant disciplinary rules; or reversion to a lower post for administrative reasons; or incapacitation by physical or mental illness or otherwise becoming unable to discharge his functions and duties and lastly on account of administrative exigencies, in the larger public interest.

8. Admittedly, in the case at hand, none of the situation/reasons, as have been detailed in Section 12 of the Act, existed in the case of the petitioner. Though, Mr. Rajan Kahol, learned Additional Advocate General, attempted to argue that transfer of the petitioner came to be effected on administrative grounds, but he was unable to spell out administrative exigency, if any. Even if aforesaid submission made by learned Additional Advocate General is presumed to be correct, he was unable to explain that how without there being recommendations

made by Police Establishment Committee headed by Director General of Police, Police officials, including petitioner, could have been transferred. Section 56 of the Act, if read in its entirety, clearly reveals that there shall be a State Police Establishment Committee headed by the Director-General of Police, which shall recommend proposal for posting and transfer of Gazetted Police Officer of the State Government, subject to provisions of the Act and relevant rules.

9. Record made available to this Court nowhere suggests that recommendations, if any, were ever made by Police Establishment Committee headed by Director General of Police. If it is so, impugned transfer order, claimed to have been issued on administrative grounds, is otherwise not tenable. Hon'ble Apex Court in case titled as Prakash Singh and Others Vs. Union of India and Others, (2006) 8 SCC 1, issued detailed directions based principally on recommendations of National Police Commission and other commissions and committees set up thereafter in respect of Police reforms. Since the misuse and abuse of Police has reduced it to the status of a mere tool in the hands of unscrupulous masters and in the process, it has caused serious violations of the rights of the people, Hon'ble Apex Court in afore judgment observed that there is immediate need to redefine the scope and functions of Police, and provide for its accountability to the law of the land, and implement the core recommendations of the Commission. Relevant Para of afore judgment, is reproduced herein-below, which reads as under:

"31. With the assistance of learned counsel for the parties, we have perused the various reports. In discharge of our constitutional duties and obligations having regard to the aforementioned position, we issue the following directions to the Central Government, State Governments and Union Territories for compliance till framing of the appropriate legislations :

State Security Commission

(1) The State Governments are directed to constitute a State Security Commission in every State to ensure that the State Government does not exercise unwarranted influence or pressure on the State police and for laying down the broad policy guidelines so that the State police always acts according to the laws of the land and the Constitution of the country. This watchdog body shall be headed by the Chief Minister or Home Minister as Chairman and have the DGP of the State as its ex-officio Secretary. The other members of the Commission shall be chosen in such a manner that it is able to function independent of Government control. For this purpose, the State may choose any of the models recommended by the National Human Rights Commission,

NHRC

Ribeiro Committee

Sorabjee Committee

1. Chief Minister/ HM as Chairman.

1. Minister i/c Police as Chairman.

1. Minister i/c Police (exofficio Chairperson).

2. Lok Ayukta or, in his absence, a retired judge of High Court to be nominated by the Chief Justice or a Member of the State Human Rights Commission.

2. Leader of Opposition.

2. Leader of Opposition.

3. A sitting or retired judge nominated by the Chief Justice of the High Court.

3. Judge, sitting or retired, nominated by the Chief Justice of the High Court.

3. Chief Secretary.

4. Chief Secretary.

4. Chief Secretary.

4. DGP (exofficio Secretary).

5. Leader of Opposition in the Lower House.

5. Three non-political citizens of proven merit and integrity.

5. Five independent Members

6. DGP as ex-officio Secretary.

6. DG Police as Secretary.

The recommendations of this Commission shall be binding on the State Government.

The functions of the State Security Commission would include laying down the broad policies and giving directions for the performance of the preventive tasks and service oriented unctions of the police, evaluation of the performance f the State police and preparing a report thereon for being placed bef re the State legislature.

Selection and Minimum Tenure of DGP:

(2) The Director Gene al of Police of the State shall be selected by the State Government f om amongst the three senior-most officers of the Department who have been empanelled for promotion to that rank by the Union P blic Service Commission on the basis of their length f service, very good record and range of experience for heading the p lice force. And, once he has been selected for the job, he should have a minimum tenure of at least two years irrespective of his date of superannuation. The DGP may, however, be relieved of his responsibilities by the State Government acting in consultation with the State Security Commission consequent upon any action taken against him under the All India Services (Discipline and Appeal) Rules or following his conviction in a court of law

in a criminal offence or in a case of corruption, or if he is otherwise incapacitated from discharging his duties.

Minimum Tenure of I.G. of Police & other officers:

(3) Police Officers on operational duties in the field like the Inspector General of Police in-charge Zone, Deputy Inspector General of Police in-charge Range, Superintendent of Police in-charge district and Station House Officer in-charge of a Police Station shall also have a prescribed minimum tenure of two years unless it is found necessary to remove them prematurely following disciplinary proceedings against them or their conviction in a criminal offence or in a case of corruption or if the incumbent is otherwise incapacitated from discharging his responsibilities. This would be subject to promotion and retirement of the officer.

Separation of Investigation:

(4) The investigating police shall be separated from the law and order police to ensure speedier investigation, better expertise and improved rapport with the people. It must, however, be ensured that there is full coordination between the two wings. The separation, to start with, may be effected in towns/urban areas which have a population of ten lakhs or more, and gradually extended to smaller towns/urban areas also.

Police Establishment Board:

(5) There shall be a Police Establishment Board in each State which shall decide all transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police. The Establishment Board shall be a departmental body comprising the Director General of Police and four other senior officers of the Department. The State Government may interfere with decision of the Board in exceptional cases only after recording its reasons for doing so. The Board shall also be authorized to make appropriate recommendations to the State Government regarding the posting and transfers of officers of and above the rank of Superintendent of Police, and the Government is expected to give due weight to these recommendations and shall normally accept it. It shall also function as a forum of appeal for disposing of representations from officers of the rank of Superintendent of Police and above regarding their promotion/transfer/disciplinary proceedings or their being subjected to illegal or irregular orders and generally reviewing the functioning of the police in the State.

Police Complaints Authority:

(6) There shall be a Police Complaints Authority at the district level to look into complaints against police officers of and up to the rank of Deputy Superintendent of Police. Similarly, there should be another Police Complaints Authority at the State level to look into complaints against officers of the rank of Superintendent of Police and above. The district level Authority may be headed by a retired District Judge while the State level Authority may be headed by a retired Judge

of the High Court/Supreme Court. The head of the State level Complaints Authority shall be chosen by the State Government out of a panel of names proposed by the Chief Justice; the head of the district level Complaints Authority may also be chosen out of a panel of names proposed by the Chief Justice or a Judge of the High Court nominated by him. These Authorities may be assisted by three to five members depending upon the volume of complaints in different States/districts, and they shall be selected by the State Government from a panel prepared by the State Human Rights Commission/Lok Ayukta/State Public Service Commission. The panel may include members from amongst retired civil servants, police officers or officers from any other department, or from the civil society. They would work whole time for the Authority and would have to be suitably remunerated for the services rendered by them. The Authority may also need the services of regular staff to conduct field inquiries. For this purpose, they may utilize the services of retired investigators from the CID, Intelligence, Vigilance or any other organization. The State level Complaints Authority would take cognizance of only allegations of serious misconduct by the police personnel, which would include incidents involving death, grievous hurt or rape in police custody. The district level Complaints Authority would, apart from above cases, may also inquire into allegations of extortion, land/house grabbing or any incident involving serious abuse of authority. The recommendations of the Complaints Authority, both at the district and State levels, for any action, departmental or criminal, against a delinquent police officer shall be binding on the concerned authority.

National Security Commission:

(7) The Central Government shall also set up a National Security Commission at the Union level to prepare a panel for being placed before the appropriate Appointing Authority, for selection and placement of Chiefs of the Central Police Organisations (CPO), who should also be given a minimum tenure of two years. The Commission would also review from time to time measures to upgrade the effectiveness of these forces, improve the service conditions of its personnel, ensure that there is proper coordination between them and that the forces are generally utilized for the purposes they were raised and make recommendations in that behalf. The National Security Commission could be headed by the Union Home Minister and comprise heads of the CPOs and a couple of security experts as members with the Union Home Secretary as its Secretary.

The aforesaid directions shall be complied with by the Central Government, State Governments or Union Territories, as the case may be, on or before 31st December, 2006 so that the bodies afore-noted became operational on the onset of the new year. The Cabinet Secretary, Government of India and the Chief Secretaries of State Governments/Union Territories are directed to file affidavits of compliance by 3rd January, 2007."

10. In afore Para, Hon'ble Apex Court held that there shall be Police Establishment Board in each State, which shall decide all transfers, postings,

promotions and other service related matters of officers, of and below the rank of Deputy Superintendent of Police. As per aforesaid judgment, State Government can interfere with the decision of the Board in exceptional cases only, that too after recording its reasons for doing so. In nutshell, Hon'ble Apex Court categorically held that it is only Police Establishment Board, which is competent to decide all transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police.

11. Pursuant to finding given by the Hon'ble Apex Court, in case detailed hereinabove, aforesaid provision with regard to establishment of Police Establishment Board also came to be incorporated in the Act under Section 56, as reproduced hereinabove. Since record made available to this Court nowhere suggests that transfer of the petitioner vide impugned transfer order was done on the basis of recommendations given by Police Establishment Committee, headed by Director General of Police, ground of administrative exigency, otherwise sought to be set-up by learned Additional Advocate General deserves outright rejection.

12. Reliance is also placed upon judgment passed by Hon'ble Apex Court in State of Rajasthan and Others Vs. Anand Prakash Solanki, (2003) 7 SCC 403. In aforesaid case, Hon'ble Apex Court held that appointment by transfer can be made by the State Government only on the recommendations of the Committee. Relevant Paragraph of aforesaid judgment, reads as under:

"9. It is true that there is no cadre as such of the President and the members of the District Fora contemplated by the Act and this is the principal consideration which has prevailed with the High Court for holding that the President and members of District Fora are not liable to be transferred inasmuch as there is no single cadre of such persons in the State. We cannot subscribe to that view. The existence of one cadre is not essential and is not the sine qua non to make available the power of transfer. As District Fora, more than one, are constituted within the State, there is nothing wrong in the President or members of one District Forum being appointed by transfer to another District Forum, subject to the requirement of sub-Section (1A) of Section 10 being satisfied. Such appointment by transfer shall be made by the State Government but only on the recommendation of the committee consisting of the President of the State Commission and two Secretaries, i.e. the committee composed as per sub-Section (1 A) of Section 10. Such appointment by transfer cannot be a frequent or routine feature. The power is there but is meant to be exercised sparingly and only in public interest or in such exigencies of administration as would satisfy the purpose of constituting the District Forum. The broader concept of 'transfer' is a change of the place of employment within an organization. Transfer is an incidence of public service and the power to transfer is available to be exercised by the employer unless an express bar or restraint on the exercise of such power can be spelt out. The power, like all other administrative powers, has to be exercised bona fide."

13. Though Mr. Rajan Kahol, learned Additional Advocate General, placed heavy reliance upon judgment passed by Division Bench of this Court in CWP No.2225 of 2020, titled *Puran Chand Vs. State of H.P. and Others*, decided on 14.07.2020, to state that Police Officer can be transferred in public interest, however, having carefully perused aforesaid judgment, this Court finds no application of the same in the case at hand. If the afore judgment is read in its entirety, it clearly provides that though minimum tenure of service of two years at a given station is provided to Officers posted as Station House Officer or as Sub-Divisional Police Officer or as Superintendent of Police of a District, but that does not mean that aforesaid Officers cannot be transferred before the completion of the minimum tenure, but same can be done in administrative exigency or in public interest. Most importantly, in aforesaid judgment, it has been held that in order to ensure that the Officers/Officials working in the Police Establishment are not subjected to illegal, arbitrary or undue frequent transfers and the transfers of the Officers/Officials are not left to the discretion of an individual, the Act itself provides for adequate safeguards by providing for establishment of a State Police Establishment Committee, headed by the Director General of Police, which besides discharging other functions, has been made responsible for recommending proposals for transfers and postings of the Gazetted Officers to the State Government. There cannot be any quarrel with the aforesaid proposition of law, rather, this Court is of the view that till the time recommendation is not made by Police Establishment Board, which in the present case is missing, no Police Officer can be transferred by the competent authority.

14. Having perused Para 9 of the petition, this Court sees no force in the submission of Mr. Jagdish Thakur, learned counsel representing private-respondent No.3, that attempt has been made by the petitioner to hoodwink this Court by misstating the facts. At this stage, it would be apt to take note of Para 9 of the petition, which reads as under:

"9. That to be fair on facts, it is submitted that private respondent herein has joined as Sub Divisional Police officer, Baijnath and, in fact, petitioner was on earned leave on and with effect from 22.12.2024 to 29.12.2024. So far as private respondent herein is concerned, prior to his transfer as SDPO, Baijnath, he was serving as Dy. Superintendent of Police, 4th Indian Reserve Battalion, Jangalebere, Hamirpur where now the person is posted as Dy. S.P. (leave reserve), Hamirpur. As such, even on the request of the petitioner, particularly in view of the facts above stated, there will be no prejudice to any person in case status quo ante orders are passed.

Hence feeling aggrieved by and dissatisfied with the impugned acts of the respondents, humble petitioner prefers the present petition is being filed on the following amongst other grounds."

15. Though while referring to afore Para, Mr. Jagdish Thakur, learned counsel representing private-respondent No.3, vehemently argued that petitioner wrongly stated that private-respondent No.3 is posted as Deputy Superintendent

(Leave Reserve), Hamirpur, whereas he had already joined as Sub-Divisional Police Officer, Baijnath, pursuant to impugned transfer order, but having carefully perused aforesaid Para in its entirety, this Court is not persuaded to agree with Mr. Thakur, for the reason that it has been categorically stated at the behest of petitioner that private-respondent No.3 has joined as Sub-Divisional Police Officer, Baijnath and petitioner was on earned leave w.e.f. 22.12.2024 to 29.12.2024. He has further submitted that prior to his posting/transfer as Sub-Divisional Police Officer, Baijnath, private-respondent was serving as Deputy Superintendent of Police, 4th Indian Reserve Battalion, Jangalbere, Hamirpur, where now petitioner has been posted as Deputy Superintendent of Police (Leave Reserve), Hamirpur. Since it is not in dispute, rather apparent from the order dated 03.01.2025 passed by this Court, thereby ordering parties to maintain status quo ante as it existed qua the posting of the petitioner and the private-respondent before the issuance of notification dated 24.12.2024, that petitioner had specifically averred in the petition that pursuant to impugned transfer order, private-respondent had joined, this Court is not persuaded to agree with Mr. Jagdish Thakur, learned counsel representing private-respondent No.3, that petitioner has not approached this Court with clean hands. Had petitioner concealed factum with regard to joining of the petitioner at Baijnath, pursuant to impugned transfer order, there was otherwise no occasion, if any, for this Court to pass status quo ante order on 03.01.2025. If aforesaid order is read in its entirety, it clearly suggests that Court at the time of passing the afore order was fully aware that private-respondent had joined at Baijnath pursuant to impugned transfer order. If it is so, it cannot be said that attempt was ever made by the petitioner to misstate the facts.

16. Since it is quite apparent from the facts taken note hereinabove that petitioner herein had not completed minimum tenure of two years at the present place of posting and none of the situations/reasons, as detailed in Section 12 of the Act, ever existed in his case, coupled with the fact that at no point of time, Police Establishment Board, headed by Director General of Police, ever recommended transfer of the petitioner to the competent authority, this Court sees no impediment in interfering with the impugned transfer order, which otherwise appears to have been passed/issued for some extraneous reasons.

17. Consequently, in view of the above, this Court finds merit in the present petition and accordingly the same is allowed. Impugned transfer order dated 24.12.2024 (Annexure P-9) is quashed and set-aside. Interim order dated 03.01.2025 stands hereby vacated.

The present petition is disposed in the above terms, so also the pending miscellaneous application(s), if any.